

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEXANDER STROSS

Plaintiff,

vs.

CLIFF DRYSDALE MANAGEMENT,
INC., DON HENDERSON &
THOMAS BROWNHILL

Defendants

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CIVIL ACTION # 12-CV-1145

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Alexander Stross respectfully alleges as follows for his complaint against Defendants Cliff Drysdale Management, Inc., Don Henderson & Thomas Brownhill:

PARTIES

1. Plaintiff Alexander Stross is a resident of Austin, Texas.
2. Upon information and belief, Defendant Cliff Drysdale Management, Inc. ("CDM") is a registered Texas corporation.
3. Upon information and belief, Defendant Don Henderson ("Henderson") is a resident of the state of Texas, and serves as a director and/or officer of CDM.
3. Upon information and belief, Defendant Thomas Brownhill ("Brownhill") is a resident of the state of Florida, and serves as director and/or officer of CDM.

NATURE OF THE CLAIMS

5. This is an action for copyright infringement under 17 U.S.C. § 101 *et seq.*

JURISDICTION and VENUE

6. This Court has subject matter jurisdiction over this action under 17 U.S.C. §§ 101 *et seq.* (actions arising under the copyright laws) and 28 U.S.C. §§ 1331 (federal question).

7. Venue is proper under 28 U.S.C. §§1391(b)(2) and 1400 because a substantial portion of the events giving rise to this suit occurred in this District; a substantial part of the property at issue is situated in this District; and because the Defendants may be found in this District. In connection, by virtue of his position on the board of CDM and/or his participation in the infringement of Stross' copyrights, Florida resident Brownhill may be "found" in this state within the meaning of 28 U.S.C. § 1400.

CONDITIONS PRECEDENT

8. All conditions precedent have been performed or have occurred.

BACKGROUND FACTS

9. Plaintiff is an architectural photographer residing in Austin, Texas. Upon information and belief, Defendant CDM is a property management company which, among other things, owns and operates a website with the domain name "www.johnnewcombeestates.com" (the "Website"), which is (or was) used by CDM to promote the John Newcombe Estate & Country Club in New Braunfels, Texas. As described above, Defendants Henderson and Brownhill are directors and/or officers of CDM, and upon information and belief, materially participate in the business thereof.

10. CDM has used one of Stross' copyrighted photographs to advertise the Website on various billboards in and around New Braunfels, Texas (hereinafter, the "Photograph"). Stross is the owner of the copyright in the Photograph, which is duly registered with the U.S. Copyright Office, bearing registration number V Au-989-644. CDM sought no license or permission from Stross for the use of the Photograph, and such use is in all respects unauthorized.

11. On or about December 5, 2012, Stross' counsel sent a notice of infringement to the Defendants. Two days later, on December 7, 2012, Stross' counsel was contacted by CDM employee Kimberly Arena, who confirmed that CDM used the Photograph without Stross' permission on billboards promoting the Website, but refused to entertain Stross' offer to retroactively license the work, or otherwise resolve the matter.

12. Stross now brings this suit for copyright infringement.

COUNT I:
COPYRIGHT INFRINGEMENT

13. Stross realleges and incorporates herein the foregoing paragraphs.

14. By their actions alleged above, Defendants have infringed Stross' copyrights in the Photograph. Specifically, by copying, distributing and/or displaying the Photograph on billboards in and around New Braunfels, Texas, Defendants have infringed Plaintiff's exclusive rights set forth in 17 U.S.C. § 106, and are therefore jointly and severally liable therefor. In addition and/or in the alternative, Defendants Henderson and Brownhill - in their capacity as directors and/or officers of CDM - are liable for contributory and/or vicarious copyright infringement in connection with the unauthorized use of Stross' Photograph because they intentionally induced and/or directed CDM to engage in the unauthorized use of the Photograph, and/or profited from CDM's use of the Photograph while declining to exercise a right to stop or limit it.

15. The Defendants' actions constituted willful infringement of Stross' copyrights inasmuch as they knew, or had reason to know, that their actions constituted copyright infringement; and/or because they acted with reckless disregard of Stross' copyrights.

16. As a result of the foregoing, Stross is entitled to actual damages plus profits of the Defendants, and/or statutory damages of up to \$150,000 per work infringed, plus attorney's fees and costs of court, for which the Defendants are jointly, and severally, liable.

JURY DEMAND

17. Stross asserts his rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

PRAYER

Stross prays for:

- A. An order that Defendants and all persons under their direction, control, permission or authority be enjoined and permanently restrained from exploiting the Photograph;
- B. An award of actual damages and/or statutory damages under 17 U.S.C. § 504(c);
- D. An award to Plaintiff of his reasonable costs and attorney's fees;
- E. Prejudgment and post-judgment interest on any damage award as permitted by law; and
- F. Such other and further relief as the Court may deem just, proper and/or necessary under the circumstances.

Dated this 14th Day of July, 2012

LAW OFFICE OF BUCK MCKINNEY, PC

/s/ R. Buck McKinney

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